

IC 35-36-7

Chapter 7. Continuances

IC 35-36-7-1

Motion by defendant; affidavit; grounds; requisite; contents

Sec. 1. (a) A motion by a defendant to postpone a trial because of the absence of evidence may be made only on affidavit showing:

- (1) that the evidence is material;
- (2) that due diligence has been used to obtain the evidence; and
- (3) the location of the evidence.

(b) If a defendant's motion to postpone is because of the absence of a witness, the affidavit required under subsection (a) must:

- (1) show the name and address of the witness, if known;
- (2) indicate the probability of procuring the witness's testimony within a reasonable time;
- (3) show that the absence of the witness has not been procured by the act of the defendant;
- (4) state the facts to which the defendant believes the witness will testify, and include a statement that the defendant believes these facts to be true; and
- (5) state that the defendant is unable to prove the facts specified in accordance with subdivision (4) through the use of any other witness whose testimony can be as readily procured.

(c) The trial may not be postponed if:

- (1) after a motion by the defendant to postpone because of the absence of a witness, the prosecuting attorney admits that the absent witness would testify to the facts as alleged by the defendant in his affidavit in accordance with subsection (b)(4);
- or

- (2) after a motion by the defendant to postpone because of the absence of written or documentary evidence, the prosecuting attorney admits that the written or documentary evidence exists.

(d) A defendant must file an affidavit for a continuance not later than five (5) days before the date set for trial. If a defendant fails to file an affidavit by this time, then he must establish, to the satisfaction of the court, that he is not at fault for failing to file the affidavit at an earlier date.

(e) If a motion for a continuance is based on the illness of the defendant or of a witness, it must be accompanied by:

- (1) oral testimony, given in open court; or
- (2) a written statement;

of a physician or hospital official having the care or custody of the defendant or witness, presenting the nature of the illness and the probable duration of the person's incapacity to attend trial. Such a written statement must be sworn to by the person making the statement before an officer authorized to administer an oath. The court may appoint a physician to examine the defendant or witness and report to the court on the nature of the person's illness and of his incapacity to attend trial. The court shall by order provide for compensation for such a physician.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-7-2

Motion by prosecuting attorney; absence of witness or written or documentary evidence; official statement; requisites

Sec. 2. (a) A prosecuting attorney may move to postpone the trial of a criminal cause because of the absence of a witness whose name is endorsed on the indictment or information, if he makes an official statement:

- (1) containing the requirements of subsections (b)(1) and (b)(2) of section 1 of this chapter;
- (2) showing that the absence of the witness has not been procured by the act of the prosecuting attorney;
- (3) stating the facts to which he believes the witness will testify, and include a statement that he believes these facts to be true; and
- (4) stating that the prosecuting attorney is unable to prove the facts specified in accordance with subdivision (3) through the use of any other witness whose testimony can be as readily procured.

Upon request of the defendant the court shall order that the prosecuting attorney's motion and official statement be made in writing.

(b) The trial may not be postponed if:

- (1) after a motion by the prosecuting attorney because of the absence of a witness, the defendant admits that the absent witness would testify to the facts as alleged by the prosecuting attorney in his official statement in accordance with subsection (a)(3); or
- (2) after a motion by the prosecuting attorney to postpone because of the absence of written or documentary evidence, the defendant admits that the written or documentary evidence exists.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-7-3

Postponements; adverse impact upon certain children

Sec. 3. (a) This section applies to criminal actions for felonies under IC 35-42, for neglect of a dependent (IC 35-46-1-4), and for attempts of those felonies (IC 35-41-5-1).

(b) If a motion is made to postpone a trial or other court proceeding that involves an offense listed in subsection (a), the court shall consider whether a postponement will have an adverse impact upon a child who is less than ten (10) years of age and who:

- (1) is the alleged victim of an offense listed in subsection (a); or
- (2) will be a witness in the trial.

As added by P.L.203-1986, SEC.1. Amended by P.L.11-1987, SEC.33.